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Attorneys for Defendants

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA SAN JOSE DIVISION

JAMES KENNEY, Derivatively on Behalf of
FINISAR CORPORATION

Case No. C-12-02268-EJD

**JOINT CASE MANAGEMENT
CONFERENCE STATEMENT AND
STIPULATION AND [REDACTED]
ORDER**

Plaintiff

V.

EITAN GERTEL, JERRY S. RAWLS,
KURT ADZEMA, ROGER C. FERGUSON,
ROBERT N. STEPHENS, THOMAS E.
PARDUN, MICHAEL C. CHILD, and
DOMINIQUE TREMPONT

Defendants

=and=

FINISAR CORPORATION, a Delaware corporation

Nominal Defendant

1 Plaintiff James Kenney, derivatively on behalf of Finisar Corporation (“Plaintiff”); and
2 defendants Eitan Gertel, Jerry S. Rawls, Kurt Adzema, Roger C. Ferguson, Robert N. Stephens,
3 Thomas E. Pardun, Michael C. Child, and Dominique Trempong and nominal defendant Finisar
4 Corporation (“Defendants”); respectfully submit this Joint Case Management Conference
5 Statement and [Proposed] Order, in response to the Clerk’s Notice setting a Case Management
6 Conference for March 19, 2015.

7 This is a shareholder derivative lawsuit seeking recovery from the directors and/or
8 officers of Finisar Corporation. It was filed after, and then related to, consolidated securities
9 class action cases also pending in this Court and captioned *In re Finisar Corporation Securities*
10 *Litigation*, Case No. 5:11-cv-01252-EJD (the “Securities Action”). See Related Case Order,
11 docket #5 (May 30, 2012). All parties have been served or waived service.

12 The parties to this derivative action have twice stipulated to stay proceedings in this case
13 pending the resolution of motions to dismiss the then-operative complaint in the Securities
14 Action. The first stipulation was signed by the Court on June 6, 2012 (docket #14); and the
15 second stipulation was signed by the Court on February 20, 2013 (docket #17) (the “February
16 2013 Order”). Under the February 2013 Order, all proceedings in this action were stayed
17 pending a ruling on defendants’ anticipated motion to dismiss the first amended complaint in the
18 Securities Action, whereupon the parties were to meet and confer and thereafter advise the Court
19 regarding further proceedings in this action.

20 On September 30, 2013, this Court entered an Order in the Securities Action granting the
21 motion to dismiss the first amended complaint with prejudice, and entered a judgment of
22 dismissal. On October 25, 2013, the plaintiffs in the Securities Action filed a notice of appeal.
23 The appeal has been briefed and is awaiting the setting of a hearing date from the Ninth Circuit.

24 Following the entry of judgment in the Securities Action, consistent with the February
25 2013 Order, the parties met and conferred and thereafter advised the Court regarding further
26 proceedings in this action. See Joint Status Report filed December 17, 2013 (docket #18).
27 Defendants proposed that the stay not continue, and hence proposed a schedule for the filing or
28 designation of an operative derivative complaint and a motion to dismiss, or in the alternative for

1 the filing of a motion to stay. Plaintiff proposed staying the case pending the resolution of the
2 Ninth Circuit appeal in the Securities Action, but, if the Court did not agree that the stay should
3 be continued, did not object to the proposed briefing schedule.

4 The Court did not take action at the time and, given the passage of time and in the interest
5 of efficiency in litigation, the parties now jointly agree that this case should be stayed pending
6 the resolution of the Ninth Circuit appeal. The parties also propose that the stay should be
7 documented in an order of the Court, as was the case with the prior stipulated stays, so that the
8 status of the case is clear. Hence, the parties respectfully request that the Court enter the
9 [Proposed] Order set forth below and that the March 19, 2015 Case Management Conference be
10 removed from the Court's calendar as unnecessary.

Respectfully submitted,

12 | DATED: March 11, 2015

ROBBINS ARROYO LLP
BRIAN J. ROBBINS
KEVIN A. SEELY
ASHLEY R. RIFKIN

/s/ Ashley R. Rifkin

Attorneys for Plaintiff

/s/ David Priebe
David Priebe

Attorneys for Defendants

STIPULATION AND [PROPOSED] ORDER

2 WHEREAS, on May 4, 2012, plaintiff James Kenney (“Plaintiff”) filed his Verified
3 Shareholder Derivative Complaint for Breach of Fiduciary Duty, Waste of Corporate Assets, and
4 Unjust Enrichment (the “Derivative Action”) on behalf of nominal defendant Finisar Corporation
5 (“Finisar” or the “Company”) and against individual defendants Eitan Gertel, Jerry S. Rawls,
6 Kurt Adzema, Roger C. Ferguson, Robert N. Stephens, Thomas E. Pardun, Michael C. Child,
7 and Dominique Trempong (collectively with Finisar, “Defendants”); and

8 WHEREAS, the Derivative Action was designated as a related case to a securities class
9 action pending in the Court captioned *In re Finisar Corporation Securities Litigation*, Case No.
10 5:11-cv-01252-EJD (“Securities Action”), which alleges that Finisar and certain officers of the
11 Company, among others, violated the federal securities laws; and

12 WHEREAS, on June 6, 2012 and February 20, 2013, the Court entered orders pursuant to
13 stipulation to stay proceedings in this Derivative Action pending the resolution of motions to
14 dismiss the then-operative complaint in the Securities Action. Under the February 2013 Order,
15 all proceedings in this action were stayed pending a ruling on defendants' anticipated motion to
16 dismiss the first amended complaint in the Securities Action, whereupon the parties were to meet
17 and confer and thereafter advise the Court regarding further proceedings in this action; and

18 WHEREAS, on September 30, 2013, this Court entered an order in the Securities Action
19 granting the motion to dismiss the first amended complaint with prejudice, and entered a
20 judgment of dismissal; and

WHEREAS, On October 25, 2013, the plaintiffs in the Securities Action filed a notice of appeal. The appeal (the “Ninth Circuit Appeal”) has been briefed and is awaiting the setting of a hearing date from the Ninth Circuit; and

WHEREAS, the parties agree that the interests of preserving the Company's and the Court's resources, efficient and effective case management, and moving the case expeditiously towards trial would best be served by deferring all proceedings in this Derivative Action pending the resolution of the Ninth Circuit Appeal;

1 NOW, THEREFORE, it is hereby stipulated and agreed by and between Plaintiff and
2 Defendants, as represented by their undersigned counsel, as follows:

3 1. All proceedings in the Derivative Action are stayed, subject to each party's right
4 to move the Court to lift the stay and the other party's right to oppose such motion.

5 2. Within thirty days from the date of a ruling in the Ninth Circuit Appeal, unless a
6 petition for rehearing *en banc* or petition to the United States Supreme Court is filed (which shall
7 extend the time until thirty days after the resolution of such petition), the parties shall meet and
8 confer concerning a schedule for further proceedings in the Derivative Action and advise the
9 Court accordingly.

10 3. In light of the stay of this Derivative Action, the Case Management Conference
11 currently scheduled for March 19, 2015, shall be taken off-calendar.

12 4. The parties will provide the Court with a joint update on the status of the Ninth
13 Circuit Appeal and any other relevant developments at least every ninety days while this Derivative
14 Action is stayed.

15 **IT IS SO STIPULATED.**

16 DATED: March 11, 2015

ROBBINS ARROYO LLP
BRIAN J. ROBBINS
KEVIN A. SEELY
ASHLEY R. RIFKIN

/s/ *Ashley R. Rifkin*
Ashley R. Rifkin

20 Attorneys for Plaintiff

22 **DLA PIPER LLP (US)**
SHIRLI FABBRI WEISS
DAVID PRIEBE
ROY K. MCDONALD

/s/ *David Priebe*
David Priebe

26 Attorneys for Defendants

1 **ATTESTATION (CIVIL LOCAL RULE 5-1(i)(3))**

2 In compliance with Local Rule 5-1(i)(3), I certify that concurrence in the filing of this
3 document was obtained from Ashley R. Rifkin.

4 */s/ David Priebe* _____.
5 David Priebe

6 **ORDER**

7 Pursuant to stipulation, IT IS SO ORDERED.
8 The Clerk shall administratively close this file.
9 DATED: 3/12/2015



UNITED STATES DISTRICT JUDGE

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